

IN THE SUPREME COURT OF THE STATE OF NEVADA

GALEN L. CLAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40698

FILED

AUG 15 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of battery with the intent to commit a crime. The district court sentenced appellant to serve a term of forty-eight months to one hundred and forty-four months in the Nevada State Prison.

First, appellant argues that he was denied an opportunity to confront the victim with evidence of her propensity for lying which would have impeached her and resulted in a more lenient sentence. The documents before this court do not support appellant's claim. The district court provided appellant's counsel with an opportunity to examine the victim after she made a statement during the sentencing hearing. Appellant, himself, brought forth this information during his statement in allocution. Appellant has failed to demonstrate any error committed by the district court in this regard.

Second, appellant argues that he was not provided an adequate opportunity to produce character witnesses at his sentencing hearing. The documents before this court do not indicate that the district court prevented appellant from presenting any mitigating evidence at the

sentencing hearing. To the contrary, there is no indication that appellant desired or even sought to present witnesses during the sentencing hearing. Appellant has failed to demonstrate any error committed by the district court in this regard.

Third, appellant argues that the district court failed to adequately canvass him at the time of his plea. Specifically, appellant argues that the district court failed to: (1) stress that it was very unlikely that appellant would receive probation in this case; (2) address the elements of the crime; (3) stress the range of sentences; and (4) ascertain how much time appellant had to discuss and make a decision regarding the plea negotiations. These claims challenge the validity of the plea. This court has held that challenges to the validity of a guilty plea must be raised in the district court in the first instance through a motion to withdraw the guilty plea or post-conviction proceedings.¹ Therefore, these contentions are inappropriately presented on direct appeal, and we decline to address them.

Finally, appellant appears to argue that he has been denied a full and fair appeal. Appellate counsel, Mr. James Buchanan, argues that because appellant alleged on the face of the proper person notice appeal that Mr. Buchanan was ineffective, there is a conflict of interest between

¹Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

Mr. Buchanan and appellant requiring the appointment of new counsel for this appeal.²

This argument is without merit. Claims of ineffective assistance of counsel should be raised in post-conviction proceedings in the district court in the first instance and are generally not appropriate for review on direct appeal.³ Thus, Mr. Buchanan is under no obligation to litigate in this appeal any claims that he provided ineffective assistance of counsel.⁴ Under these circumstances, appellant has failed to demonstrate that a conflict of interests requires the appointment of new appellate counsel for this appeal. We have reviewed those claims raised by

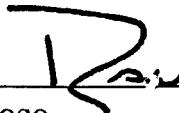
²Appellant's notice of appeal recites that Mr. Buchanan was ineffective because he allegedly failed to advise appellant of his right to appeal. But appellant filed a timely notice of appeal in proper person. Thus, it is clear that appellant has not been deprived of a direct appeal due to counsel's alleged failure. Nor has appellant suffered any prejudice as a result of that alleged failure.

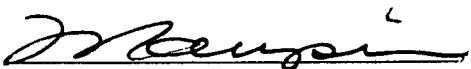
³Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).


⁴We note that any attempt by Mr. Buchanan to litigate claims that he provided ineffective assistance during the trial court proceedings presents Buchanan with an obvious conflict of interests. Consequently, Buchanan may not represent appellant and should not be required to appear on appellant's behalf on any post-conviction petition claiming that Buchanan provided ineffective assistance in the district court proceedings leading to appellant's conviction.

appellant that are appropriate for direct appeal review, and we conclude that appellant has failed to demonstrate any error.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

⁵This court has recognized that claims appropriate for direct appeal review may include:

[A] challenge to the constitutional validity of the statute on which the conviction was based; a challenge to the sentence imposed on constitutional or other grounds; a claim that the state breached the plea agreement at sentencing; a challenge to the procedures employed that led to the entry of the plea, if that challenge does not address the voluntariness of the plea; and a claim that the district court entertained an actual bias or that there were other conditions that rendered the proceedings unfair.

Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

cc: Hon. Donald M. Mosley, District Judge
James L. Buchanan II
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk